

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LARRY D. SHIELDS)	
Claimant)	
VS.)	
)	Docket No. 234,412
WESTERN ENVIRONMENTAL MANAGEMENT)	
Respondent)	
AND)	
)	
CRAWFORD AND COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed Administrative Law Judge Jon L. Frobish's October 22, 1998, preliminary hearing Order.

ISSUES

The Administrative Law Judge denied claimant's request for temporary total disability compensation and medical treatment with Michael P. Estivo, D.O. The Administrative Law Judge found claimant's back problems were due to degenerative changes and not the work-related injury.

Claimant contends the preliminary hearing record proves he suffered a back injury while employed by respondent on August 7, 1997. Claimant further contends he is in need of medical treatment and is unable to work because of the work-related back injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, the Appeals Board finds as follows:

The Appeals Board finds that claimant, through his testimony and the medical records offered and admitted into evidence at the preliminary hearing, proves he suffered a back injury while working for the respondent on August 7, 1997. Claimant testified he felt a pop in both his low and middle back as he lifted and twisted while performing construction work for the respondent.

Claimant continued to work for the respondent until November 24, 1997, when his family physician, Pandu P. Chillal, M.D., took him off work. Dr. Chillal had claimant undergo

a CT examination of the lumbar spine. The radiologist found a small right paracentral disc herniation at the L4-L5 level.

Respondent and its insurance carrier referred claimant to Anand J. Balson, M.D., in Coffeyville, Kansas. Dr. Balson in turn recommended that claimant be referred to a neurosurgeon for epidural injections. The respondent then referred claimant to Advanced Orthopaedic Associates in Wichita, Kansas, where claimant saw Jacob Amrani, M.D. After Dr. Amrani examined the claimant, he did not feel claimant was a surgical candidate and recommended epidural injections and physical therapy. Claimant did not improve from the epidural injections.

Thereafter, respondent referred claimant to Kevin D. Komes, M.D., in Pittsburg, Kansas. Dr. Komes first saw claimant on February 25, 1998, and placed claimant in a physical therapy program, four times per week from February 26, 1998, through April 22, 1998. Dr. Komes' diagnosis was chronic low-back pain secondary to a work-related injury. The claimant gave Dr. Komes a history of significant sciatica for many years. In fact, he told Dr. Komes he had gotten muscle relaxers from his family physician a few days before his injury. Dr. Komes discharged claimant on April 22, 1998, with permanent restrictions and a 5 percent whole body functional impairment.

At the request of claimant's attorney, claimant saw Edward J. Prostic, M.D., on June 23, 1998. Dr. Prostic took a history and conducted a physical examination of claimant. The doctor concluded claimant had injured his low back while working for the respondent on August 7, 1997. Claimant's injury appeared to have herniated a disc at L4-L5. The doctor recommended anti-inflammatory medication and therapeutic exercises. He placed permanent restrictions on claimant and rated claimant with a 15 percent whole body functional impairment.

Respondent sent claimant for an independent medical examination to Eugene E. Kaufman, M.D., an orthopedic surgeon in Wichita, Kansas. Dr. Kaufman saw claimant on June 24, 1998. The doctor concluded claimant had suffered a lumbodorsal sprain but was also concerned with claimant's urinary symptomatology. He had claimant undergo an MRI examination of both his lumbar and thoracic spine on August 6, 1998, and August 13, 1998, respectively. The MRI examinations found degenerative changes but no disc herniation. Dr. Kaufman reviewed a surveillance videotape of claimant's activities on March 23, 1998, and March 24, 1998. Based on this review, Dr. Kaufman concluded he felt claimant, during his examination, had exaggerated his symptoms.

Claimant's most recent medical examination was conducted by Michael P. Estivo, D.O. Claimant testified he went on his own to Dr. Estivo first on September 2, 1998, and again on September 15, 1998. Dr. Estivo's medical records indicate he diagnosed low-back pain with radiculopathy, degenerative changes in the lumbar spine and thoracic spine pain. Dr. Estivo recommended claimant undergo a discogram, a series of epidural injections, and be placed in a back brace. Dr. Estivo indicated claimant was unable to work at this time.

As summarized above, respondent and its insurance carrier voluntarily provided claimant with extensive medical treatment for his work-related low-back injury. Although the

preliminary hearing record does not contain the specific number of weeks that were paid, temporary total disability was also voluntarily provided by the respondent and its insurance carrier. After this extensive medical treatment, claimant now claims he is in need of additional medical treatment and temporary total disability benefits.

Claimant testified he remains symptomatic in his low back and also in his mid-back area. However, the medical records do not indicate claimant made mid-back complaints until at least March of 1998. Additionally, although claimant contends he is unable to work, the medical records, claimant's own testimony, and the surveillance videotape indicate claimant has performed physical farm labor since his August 7, 1997, injury. In April 1998, Dr. Komes determined for the August 7, 1997 injury that claimant had met maximum medical improvement when he released claimant from his treatment with permanent restrictions and a permanent functional impairment rating. Dr. Prostic, in June of 1998, after examining claimant, did not recommend any further treatment for the August 7, 1997, injury except for anti-inflammatory medication and therapeutic exercises. The doctor then placed permanent restrictions on claimant and rated claimant. After Dr. Kaufman's June 1998 examination of claimant, after the August 1998 MRI examinations showed no disc herniation and after the doctor reviewed the surveillance tape of claimant's activities, he felt claimant was exaggerating his symptoms.

The Appeals Board finds claimant injured his low back at work on August 7, 1997. However, respondent voluntarily provided claimant with extensive medical treatment for that injury and also provided claimant with temporary total disability compensation. At this time, the Appeals Board finds claimant has failed to prove he is in need of additional medical treatment or additional temporary total disability benefits that are causally related to the August 7, 1997, low-back injury. The Appeals Board finds the more plausible explanation for claimant's current need for medical treatment and temporary total disability benefits would be from his continued farm work activities.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon J. Frobish's October 22, 1998, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

c: Fred Spigarelli, Pittsburg, KS
Michael D. Streit, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director